

05-31-01

DNK-1998-055-PA-DIV2:JBM:108138

Utility Patent Application Transmittal

(Only for new nonprovisional applications under 37 CFR § 1.53(b))

Attorney Docket Number 002-2533

First Inventor or Application Identifier Charles L. Branch et al.

Title INTERBODY FUSION GRAFTS AND INSTRUMENTATION

Express Mail Label Number EM372933019US

APPLICATION ELEMENTS

Address To: Commissioner for Patents
Box Patent Application
Washington, DC 20231

See MPEP chapter 600 concerning utility patent application contents

1. ☒ *Fee Transmittal Form (e.g., PTO/SB/17)
2. ☐ Applicant claims small entity status
See 37 CFR 1.27
3. ☒ Specification [Total Pages 49]
(preferred arrangement set forth below)
- Descriptive title of the Invention
 - Cross References to Related Applications
 - Statement Regarding Fed sponsored R & D
 - Reference to Microfiche Appendix
 - Background of the Invention
 - Brief Summary of the Investigation
 - Brief Description of the Drawings (if filed)
 - Detailed Description
 - Claim(s)
 - Abstract of the Disclosure
4. ☒ Drawing(s) (35 U.S.C. 113) (Informal) 34
5. Oath or Declaration (two) *unsigned* [Total Pages 6]
- a. ☐ Newly executed (original or copy)
- b. ☒ Copy from a prior application (37 C.F.R. § 1.63(d))
(for continuation/divisional with Box 16 completed)
- i. ☐ **DELETION OF INVENTOR(S)**
Signed statement attached deleting inventor(s) named in the prior application, see 37 C.F.R. §§ 1.63(d)(2) and 1.33(b).
6. Application Data Sheet
☐ See 37 CFR 1.76

7. ☐ CD-ROM or CD-R in duplicate, large table or computer program (Appendix)
8. ☐ Nucleotide and/or Amino Acid Sequence Submission (if applicable, all necessary)
- a. ☐ Computer Readable Form (CRF)
- b. ☐ Specification Sequence Listing on:
- i. ☐ CD-ROM or CD-R (2 copies) or
- ii. ☐ paper
- c. ☐ Statement verifying identity of above copies

ACCOMPANYING APPLICATION PARTS

9. ☐ Assignment Papers (cover sheet(s) & document(s))
10. ☐ 37 C.F.R. § 3.73(b) Statement ☒ Power of Attorney
(when there is an assignee)
11. ☐ English Translation Document (if applicable)
12. ☒ Information Disclosure Statement (IDS)/PTO-1449 ☒ Copies of IDS Citations
13. ☒ Preliminary Amendment
14. ☒ Return Receipt Postcard (MPEP 503)
(Should be specifically itemized)
15. ☐ Certified Copy of Priority Document(s)
(if foreign priority is claimed)
16. ☒ Other: Petition to Make Special Transmittal of Formal Drawings (34 sheets)

17. If a **CONTINUING APPLICATION**, check appropriate box, and supply the requisite information below and in a preliminary amendment or in an Application Data Sheet under 37 CFR 1.76:

☐ Continuation ☐ Divisional ☒ Continuation-in-part (CIP) of prior application No: **09/698,623**, filed **October 27, 2000**, which claims priority to application No: **09/181,353**, filed **October 28, 1998**, Examiner: **Ngo Group / Art Unit: 3731**; and to prior application No. **09/722,205**, filed **November 25, 2000**, which claims priority under 35 U.S.C. § 119 to **PCT Application, Serial No. US98/17769**, filed **August 27, 1998**.

For CONTINUATION or DIVISIONAL APPS only: The entire disclosure of the prior application, from which an oath or declaration is supplied under Box 5b, is considered a part of the disclosure of the accompanying continuation or divisional application and is hereby incorporated by reference. the incorporation can only be relied upon when a portion has been inadvertently omitted from the submitted application parts.

18. CORRESPONDENCE ADDRESS

☐ Customer Number or Bar Code Label or ☒ Correspondence address below
Insert Customer No. or Attach bar code label here

Name: James B. Myers Jr.
Woodard, Emhardt, Naughton, Moriarty and McNett

Address: Bank One Center/Tower
111 Monument Circle, Suite 3700

City: Indianapolis State: IN Zip Code: 46204-5137

Country: USA Telephone: 317-634-3456 Fax: 317-637-7561

Name (Print/Type): James B. Myers Jr. Registration No. (Attorney/Agent): 42,021

Signature: *James B. Myers Jr.* Date: May 30, 2001

Express Mail Label Number EM372933019US

Date of Deposit May 30, 2001

I hereby certify that this paper is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR Section 1.10 on the date indicated above and is addressed to the Assistant Commissioner for Patents, Washington DC 20231.

James B. Myers Jr.
Signature of person mailing paper or fee

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FEE TRANSMITTAL FOR FY 2001

Patent fees are subject to annual revision.

Complete if Known

Application Number	Unknown
Filing Date	May 30, 2001
First Named Inventor	Charles L. Branch et al.
Group Art Unit	Unknown
Examiner Name	Unknown
Attorney Docket Number	4002-2533

Total Amount of Payment (\$1100)

METHOD OF PAYMENT

1. ☐ The Commissioner is hereby authorized to charge indicated fees and credit any over payments to:

Deposit Account Number: 23-3030

Deposit Account Name: Woodard, Emhardt, Naughton, Moriarty & McNett

☒ Charge any Additional Fee Required Under 37 CFR 1.16 and 1.17

☐ Applicant claims small entity status. See 37 CFR 1.27.

2. ☒ Payment Enclosed:

☐ Check ☐ Credit Card ☐ Money Order ☐ Other

FEE CALCULATION (continued)

3. ADDITIONAL FEES

Large Fee Code	Entity Fee (\$)	Small Fee Code	Entity Fee (\$)	Fee Description	Fee Paid
105	130	205	65	Surcharge - late filing fee or oath	
127	50	227	25	Surcharge - late provisional filing fee or cover sheet.	
139	130	139	130	Non-English specification	
147	2,520	147	2,520	For filing a request for <i>ex parte</i> reexamination	
112	920*	112	920*	Requesting publication of SIR prior to Examiner	
113	1,840*	113	1,840*	Requesting publication of SIR after Examiner action	
115	110	215	55	Extension for reply within first month	
116	390	216	195	Extension for reply within second month	
117	890	217	445	Extension for reply within third month	
118	1,390	218	695	Extension for reply within fourth month	
128	1,890	228	945	Extension for reply within fifth month	
119	310	219	155	Notice of Appeal	
120	310	220	155	Filing a brief in support of an appeal	
121	270	221	135	Request for oral hearing	
138	1,510	138	1,510	Petition to institute a public use proceeding	
140	110	240	55	Petition to revive - unavoidable	
141	1,240	241	620	Petition to revive - unintentional	
142	1,240	242	620	Utility issue fee (or reissue)	
143	440	243	220	Design issue fee	
144	600	244	300	Plant issue fee	
122	130	122	130	Petitions to the Commissioner	130
123	50	123	50	Petitions related to provisional applications	
126	180	126	180	Submission of Information Disclosure Stmt	
581	40	581	40	Recording each patent assignment per property (times number of properties)	
146	710	246	355	Filing a submission after final rejection (37 CFR 1.129(a))	
149	710	249	355	For each additional invention to be examined (37 CFR 1.129(b))	
179	710	279	355	Request for Continued Examination (RCE)	
169	900	169	900	Request for expedited examination of a design application	

Other Fee (specify) _____

* Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$130)

FEE CALCULATION

1. BASIC FILING FEE

Large Fee Code	Entity Fee (\$)	Small Fee Code	Entity Fee (\$)	Fee Description	Fee Paid
101	710	201	355	Utility Filing Fee	710
106	320	206	160	Design Filing Fee	
107	490	207	245	Plant Filing Fee	
108	710	208	355	Reissue Filing Fee	
114	150	214	75	Provisional Filing Fee	
SUBTOTAL (1)					(\$710)

2. EXTRA CLAIM FEES

Total Claims	Extra Claims	Fee From Below	Fee Paid
30	-20** = 10	X 18 = 180	180
Independent Claims	4	-3** = 1	X 80 = 80
Multiple Dependent			

Large Fee Code	Entity Fee (\$)	Small Fee Code	Entity Fee (\$)	Fee Description
103	18	203	9	Claims in excess of 20
102	80	202	40	Independent claims in excess of 3
104	270	204	135	Multiple dependent claim, if not paid
109	80	209	40	**Reissue independent claims over original patent
110	18	210	9	**Reissue claims in excess of 20 and over original patent

SUBTOTAL (2) (\$260)

**or number previously paid, if greater; For Reissues, see above

SUBMITTED BY

Name (Print/Type)

James B. Myers Jr

Registration No. (Attorney/Agent)

42021

Telephone

(317) 634-3456

Signature

James B. Myers Jr

Date

May 30, 2001

Warning: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of:)

Charles L. Branch et al.)

Serial No.)

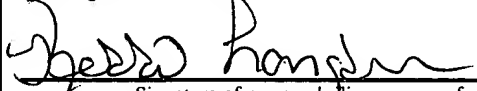
Filed Herewith)

INTERBODY FUSION GRAFTS)
AND INSTRUMENTATION)

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Date of Deposit:

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 Signature of person mailing paper or fee


PETITION TO MAKE SPECIAL
UNDER 37 C.F.R. §1.120(d)

Hon. Commissioner for Patents
 Washington, D.C. 20231

Dear Sir:

Please consider this Petition to Make Special Under 37 C.F.R. §1.120(d). Applicants submit with this Petition the Petition fee pursuant to 37 C.F.R. §1.17(i). Please charge any other fees that may be due to Deposit Account No. 23-3030, but do not include the payment of any issue fees that are or may become due.

In support of this Petition, Applicant hereby submits the Statement of James B. Myers Jr., attorney for the Applicants which states, in pertinent part:

1. There is an infringing product actually on the market.
2. A rigid comparison of the allegedly infringing product with the claims of the application has been made and, in the Applicants' opinion, some of the claims are unquestionably infringed.

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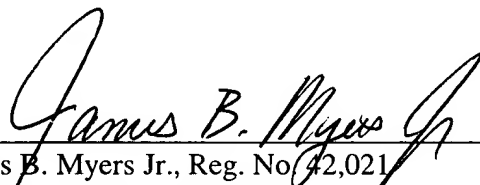
PETITION TO MAKE SPECIAL

Page 1 of 2

3. A search of the prior art has been made in a counterpart PCT application, Serial No. PCT/US99/25147 and PCT Application Serial No. PCT/US/98/17769. Copies of the two International Search Reports and the references listed in the accompanying Information Disclosure Citation are submitted concurrent with this Petition.

Accordingly, Applicants respectfully requests that this Petition to Make Special be granted and that the application undergo accelerated examination leading to allowance of all pending claims.

Respectfully submitted,

By: 
James B. Myers Jr., Reg. No. 42,021
Woodard, Emhardt, Naughton
Moriarty & McNett
Bank One Center/Tower
111 Monument Circle, Suite 3700
Indianapolis, Indiana 46204-5137
(317) 634-3456